

The Queensland Government has referred the state's industrial relations powers for the private sector to the Commonwealth with an effective date of 1 January 2010.

As from this date all employers and employees, with the exception of state and local government, will be covered by the national industrial relations system administered by the Commonwealth Government.

Entitlements to long service leave can be confusing because of the jurisdictional changes. All enquiries relating to clarification of entitlement should, in the first instance, be directed to:

- Fair Work Infoline on 13 13 94
- Fair Work Online website: [www.fairwork.gov.au](http://www.fairwork.gov.au)

If there is no entitlement to long service leave under the Federal jurisdiction, an employee **may** have an entitlement in accordance with the information set out below.

## What is long service leave?

Long service leave is a period of paid leave granted to an employee in recognition of a long period of service to an employer. Entitlements for long service leave are provided for in the *Industrial Relations Act 1999* (the Act).

## Who is entitled to long service leave?

The Act provides that all employees in Queensland are entitled to long service leave, subject to certain conditions.

Casuals, regular part-time employees and seasonal employees have specific entitlements to long service leave.

An employee whose employment is covered by a federal award that provides for long service leave, are entitled to long service leave in accordance with that federal award.

## How much long service leave are employees entitled to?

As from 3 June 2001 the entitlement to long service leave is 8.6667 weeks on full pay after each period of 10 years continuous service.

*Comparison with previous entitlements:*

- *Service prior to 3 June 2001 accumulated an entitlement of 13 weeks for 15 years service.*
- *Service prior to 11 May 1964 accumulated an entitlement of 13 weeks for 20 years service.*

After an employee has completed their first 10 years continuous service, they are entitled to take any further long service leave accumulated only after another five years continuous service (i.e. after 15 years continuous service).

*Comparison with previous entitlements:*

*Employees received their first leave entitlement after 15 years service and waited a further 5 years [i.e. 20 years service] before accumulating a further leave entitlement.)*

Long service leave entitlements accumulated for such periods but which have not been taken are payable on termination.

Continuous Service - Generally, continuous service refers to paid working time and paid leave. Employment is the total period engaged and can include unpaid leave. The long service leave entitlement is based on continuous service with the same employer including instances where the Act states that an employee's continuity of service is:

- Taken to be with the same employer, or
- Not broken in certain circumstances.

## How will the most recent amendments affect an employee's entitlement to take long service leave?

For those employees in employment as at 3 June 2001, the amendments provide for the "phasing in" of the new entitlements. Because of the reduction in time to become entitled to long service leave, the Act provides that only two-thirds of an employee's continuous service completed before 3 June 2001 counts as continuous service for the purposes of working out when long service leave may be taken. As a result, the date upon which long service leave becomes due is affected.

To calculate long service leave under these 'phasing in' provisions, service before 3 June 2001 is reduced to two-thirds of its total. The difference between this reduced service and 10 years is the period after 3 June 2001 that must be worked before leave is due. This subsequent period of service is added to the actual service before 3 June 2001 and the total is multiplied by 0.86667 weeks leave for each year (and fraction of a year) to calculate the amount of leave owing.

The following examples illustrate this method.

### Example 1

An employee has completed 1 year of service immediately before 3 June 2001. The 1 year counts as 0.6667 (i.e. two-thirds x 1) years continuous service for working out when the employee may take long service leave.

The employee may take leave after completing another 9.3333 ( $0.6667 + 9.3333 = 10$ ) years continuous service. This means they will be entitled to take leave only after they have achieved a total of 10.3333 (i.e.  $1 + 9.3333$ ) years continuous service. The employee's entitlement at that time will be 8.9556 weeks (i.e.  $10.3333 \times 0.86667$  weeks).

### Example 2

An employee has completed 10 years service immediately before 3 June 2001. The 10 years count as 6.6667 (i.e. two-thirds x 10) years continuous service for working out when the employee may take long service leave.

The employee may take leave after completing another 3.3333 ( $6.6667 + 3.3333 = 10$ ) years continuous service. This means they will be entitled to take leave only after they have achieved a total of 13.3333 (i.e.  $10 + 3.3333$ ) years continuous service. The employee's entitlement at that time will be 11.5556 weeks (i.e.  $13.3333 \times 0.86667$  weeks).

### Example 3

An employee has completed 13 years service immediately before 3 June 2001. The 13 years count as 8.6667 (i.e. two-thirds x 13) years continuous service for working out when the employee may take long service leave.

The employee may take leave after completing another 1.3333 ( $8.6667 + 1.3333 = 10$ ) years continuous service. This means they will be entitled to take leave only after they have achieved a total of 14.3333 (i.e.  $13 + 1.3333$ ) years continuous service. The employee's entitlement then will be 12.4222 weeks (i.e.  $14.3333 \times 0.86667$  weeks).

These provisions would not reduce any entitlement that an employee has already accumulated (e.g. leave for employees with 15 years or more service) prior to 3 June 2001.

The phasing-in provisions outlined above, where only two-thirds of an employee's continuous service completed before 3 June 2001 counts as continuous service, do not apply to the calculation of pro rata long service leave payments made on termination of employment.

In calculating pro rata long service leave payments to be made on termination of employment all continuous service by an employee is taken into account.

*Note:* See the tables at the end of this fact sheet for more extensive examples on calculation of leave entitlements.

## Are casual employees entitled to long service leave?

Prior to 23 June 1990, casual employees only gained an entitlement to long service leave in certain exceptional circumstances. As from 23 June 1990, an employee who is regularly employed by the same employer for at least 32 hours in each consecutive period of four weeks has an entitlement to long service leave.

On 30 March 1994, the legislation was amended so that all continuous service after that date is taken into account in calculating long service leave entitlements. However, the continuous service ends if the employment is broken by more than 3 months between the end of 1 employment contract and the start of the next employment contract.

In the case of casual employees who qualified for long service leave in accordance with any previous

legislation, each period is totalled and taken into account.

The casual entitlement to long service leave is calculated as the number of hours for the complete period of employment worked/52 x 8.6667/10.

## How is payment for long service leave calculated?

Long service leave is paid at the current ordinary rate (i.e. excluding overtime and penalty payments) for the period of the leave. If an employee is paid above the award rate then the long service leave is to be paid at the higher rate.

### Casual and regular part-time employees

The qualifying period for long service leave entitlements for casual or regular part-time employees is the same as that for full-time employees (i.e. leave is due after 10 years continuous service or taking into account the Act's phasing in provisions such longer period before accessing time off and pro rata payment on termination after 10 years or after 7 years continuous service for the instances detailed in the Act). However, the number of hours leave due and the amount payable at that due date will be determined by taking into account the reduced hours worked by casual or regular part-time employees.

The number of hours leave to which a casual or regular part-time employee is entitled is calculated by dividing the total ordinary hours worked during the period of service by 52, and multiplying this amount by 8.6667/10 (8.6667 weeks long service leave is due after 10 years service).

### Example of Calculation:

A casual or regular part-time employee who worked 15,600 ordinary hours during a 10 year period of service and was paid an hourly rate of \$12 at the time of taking leave would be entitled to be paid:

$$\begin{array}{r} (15600 \quad \times \quad 8.6667) \\ \hline (52 \quad \quad 10) \quad \times \$12 \\ \hline = \$3,120.01 \end{array}$$

If the employer and the casual or regular part-time employee agree, the entitlement can be taken in the form of a full-time equivalent. Where an award provides for a 40-hour week, 260 hours leave could be taken as 6½ weeks leave.

### Employees who were casual or regular part-time for any part of their service

The long service leave entitlement for an employee who was a casual or regular part-time employee at any time during their continuous service is also calculated

using the method outlined above. The total ordinary hours used in the calculation will include both the hours while employed as a full time employee as well as those while employed as a casual or regular part-time employee.

### Employees paid on commission

If an employee is entitled to receive an amount representing commission in the employee's long service leave payment, the Act stipulates the employer must pay the default average commission unless:-

- A relevant industrial instrument or contract between the employer and employee otherwise provides; or
- The Industrial Relations Commission, on application, considers that the default average commission would not represent a fair amount in the circumstances.

The Act defines *default average commission* as:-

- The total commissions payable to the employee in the 1 year before the leave is taken
- Divided by 52.179
- Multiplied by the number of weeks leave for which payment is being made.

Some industrial instruments contain a formula specific to their industry e.g. property sales, motor vehicle sales.

## Is there any long service leave entitlement for shorter periods of service?

As from 3 June 2001, employees are entitled to receive proportionate payment of long service leave on termination of employment after completing 7 years continuous service. This payment is often called pro rata long service leave.

*(Comparison with previous entitlements: Employees became entitled to payment of pro rata long service leave on termination of employment after 10 years service).*

However, employees who have completed 7 but less than 10 years continuous service are entitled to pro rata long service leave only if:

- The employee's service is terminated by their death;
- The employee terminates their service because of their illness or incapacity or because of a domestic or other pressing necessity;

- The employer dismisses the employee for a reason other than the employee's conduct, capacity or performance; or
- The employer unfairly dismisses the employee.

For an employee who has 10 years continuous service or more, the payment of long service leave on termination of employment is not subject to the above listed criteria.

### **Do periods of absence from work count towards service?**

Generally, the only periods of absence from work which count as continuous service to determine a long service leave entitlement are periods of paid leave. Periods of absences on WorkCover also count as continuous service to determine a long service leave entitlement.

Long service leave does not accumulate during parental leave.

### **Can service be broken by a period of absence from work?**

The long service leave entitlement is based on a period of continuous service. Continuity of service may be broken by certain absences from work with the result that an employee loses the long service leave entitlement accrued for the continuous service prior to the absence. However, periods of absence from work due to the following do not break continuity of the employee's service:

- absence from work on leave (paid or unpaid) granted by the employer, including such absences through illness or injury;
- termination of the employee's service because of illness or injury, provided the employee is re-employed by the same employer and the employee has not engaged in other work during the absence;
- termination of the employee's employment if the employee is re-employed by the same employer within three months; and
- interruption or termination of an employee's service by the employer due to an industrial dispute or slackness in business or trade if the employee is re-employed by the same employer.

### **Can long service leave transfer from one employer to another?**

The Act provides for certain leave entitlements to transfer from one employer to another when a transfer of a calling takes place. For example, when a business changes hands or is sold and the new employer continues to employ any existing staff, responsibility

for long service leave entitlements accumulated with the previous employer transfers to the new employer.

A 'transferred' employee is entitled to all long service leave accumulated for the total period of their employment - including long service leave accumulated with the previous employer.

The transfer of entitlement also occurs if an employee is dismissed at the time the business changes hands or within the preceding month and is subsequently employed by the new employer within three months.

### **How do public holidays affect a period of long service?**

Long service leave is exclusive of public holidays. Therefore any public holidays falling within a period of long service leave must be added to the leave.

### **When can an employee take long service leave?**

The time and manner of taking long service leave should be agreed between the employer and employee. Where agreement can't be reached, the employer can - with at least three months written notice - require an employee to take at least four weeks long service leave.

### **Can I 'cash in' on my long service leave?**

If permitted under their industrial instrument (e.g. an award or agreement approved by the Commission), an employee may make an agreement with their employer to receive payment of all or part of their long service leave entitlement instead of taking the leave. Any such agreement must be in writing and signed by the employee and the employer.

If the employee is not covered by an industrial instrument or if the applicable industrial instrument does not provide for payment of long service leave instead of taking the leave, the employee may make application to the Commission for an order to make such a payment.

The Commission may make such an order only if satisfied that the payment should be made on compassionate grounds or on the ground of financial hardship.

### **What time and wages records are used to calculate long service leave entitlements?**

As long service leave entitlements are based on continuous service it is important that complete and accurate time and wages records are kept by the

employer.

An employer is required to keep a record of the total number of ordinary hours worked by each casual employee during the period 1 July to 30 June each financial year.

## **What is Portable Long Service Leave?**

In addition to the long service leave provisions under the industrial relations legislation, portable long service leave is available to building and construction industry employees (apprentices, trainees, casuals and full-time workers) and contract cleaning industry employees. This enables employees to work for many employers and gain their long service leave benefit from the Portable Long Service Leave Scheme. For further information on both these industry schemes contact QLeave toll free on telephone 1800 803 491.

### **Building and construction industry**

Portable Long Service Leave provides long service leave entitlements to workers in the building and

construction industry. As the building and construction industry is project driven, it would be impossible for most workers to accrue enough service with one employer to be eligible for long service leave.

Eligible workers who are registered with QLeave receive 1 credit for every day they work to a total of 220 credits per year. After 10 years work or 2,200 credits are recorded, workers will be entitled 8.67 weeks of paid long service leave. This also applies for apprentices and trainees.

### **Contract cleaning industry**

Under the Contract Cleaning Industry (Portable Long Service Leave) Act 2005, effective from 1 July 2005, workers in the contract cleaning industry are eligible to portable long service leave entitlements.

Employees in the contract cleaning industry rarely work for one employer long enough to be able to claim paid long service leave. Portable long service leave means workers will get service credits for work in the industry no matter how many employers they work for or projects they work on. These credits are recorded and when workers have built up enough credits, they will be entitled to paid long service leave.

## Tables to calculate long service leave entitlements

**TABLE 1**

Use this table to calculate long service leave entitlements for employees who started employment before 3 June 2001 and had less than 15 years service as at that date.

The phasing-in provisions in this table are not applicable to the calculation of pro rata long service leave payable on termination of employment. Please use TABLE 2 for the calculation of pro rata long service leave.

1	2	3	4	5
Years of service as at 3 June 2001	Years of service reduced to two-thirds to allow phasing-in (2/3 x Col 1)	Additional years of service that must be worked before leave can be taken (10 - Col 2)	Total years of service worked before leave can be taken (Col 3 + Col 1)	Total weeks leave entitlement when qualifying period reached (Col 4 x 0.86667)
0	0.0000	10.0000	10.0000	8.6667
1	0.6667	9.3333	10.3333	8.9556
2	1.3333	8.6667	10.6667	9.2445
3	2.0000	8.0000	11.0000	9.5334
4	2.6667	7.3333	11.3333	9.8222
5	3.3333	6.6667	11.6667	10.1112
6	4.0000	6.0000	12.0000	10.4000
7	4.6667	5.3333	12.3333	10.6889
8	5.3333	4.6667	12.6667	10.9778
9	6.0000	4.0000	13.0000	11.2667
10	6.6667	3.3333	13.3333	11.5556
11	7.3333	2.6667	13.6667	11.8445
12	8.0000	2.0000	14.0000	12.1334
13	8.6667	1.3333	14.3333	12.4222
14	9.3333	0.6667	14.6667	12.7112
15	10.0000	0.0000	15.0000	13.0001



**TABLE 2**

Use this table to calculate:

long service leave for employees who started employment before 3 June 2001 and had 15 years service or more as at that date,

long service leave for employees who started employment on or after 3 June 2001, and

pro rata long service leave payable on termination of employment.

This table may also be used to calculate leave for a further period of employment after becoming entitled to a first period of long service leave (see examples 2 and 5 below).

Completed Years	Completed Months											
	0	1	2	3	4	5	6	7	8	9	10	11
0	-	0.0722	0.1444	0.2167	0.2889	0.3611	0.4333	0.5056	0.5778	0.6500	0.7222	0.7944
1	0.8667	0.9389	1.0111	1.0834	1.1556	1.2278	1.3000	1.3723	1.4445	1.5167	1.5889	1.6611
2	1.7333	1.8055	1.8777	1.9500	2.0222	2.0944	2.1666	2.2389	2.3111	2.3833	2.4555	2.5277
3	2.6000	2.6722	2.7444	2.8167	2.8889	2.9611	3.0333	3.1056	3.1778	3.2500	3.3222	3.3944
4	3.4667	3.5389	3.6111	3.6834	3.7556	3.8278	3.9000	3.9723	4.0445	4.1167	4.1889	4.2611
5	4.3333	4.4055	4.4777	4.5500	4.6222	4.6944	4.7666	4.8389	4.9111	4.9833	5.0555	5.1277
6	5.2000	5.2722	5.3444	5.4167	5.4889	5.5611	5.6333	5.7056	5.7778	5.8500	5.9222	5.9944
7	6.0667	6.1389	6.2111	6.2834	6.3556	6.4278	6.5000	6.5723	6.6445	6.7167	6.7889	6.8611
8	6.9333	7.0055	7.0777	7.1500	7.2222	7.2944	7.3666	7.4389	7.5111	7.5833	7.6555	7.7277
9	7.8000	7.8722	7.9444	8.0167	8.0889	8.1611	8.2333	8.3056	8.3778	8.4500	8.5222	8.5944
10	8.6667	8.7389	8.8111	8.8834	8.9556	9.0278	9.1000	9.1723	9.2445	9.3167	9.3889	9.4611
11	9.5333	9.6055	9.6777	9.7500	9.8222	9.8944	9.9666	10.0389	10.1111	10.1833	10.2555	10.3277
12	10.4000	10.4722	10.5444	10.6167	10.6889	10.7611	10.8333	10.9056	10.9778	11.0500	11.1222	11.1944
13	11.2667	11.3389	11.4111	11.4834	11.5556	11.6278	11.7000	11.7723	11.8445	11.9167	11.9889	12.0611
14	12.1333	12.2055	12.2777	12.3500	12.4222	12.4944	12.5666	12.6389	12.7111	12.7833	12.8555	12.9277
15	13.0000	-	-	-	-	-	-	-	-	-	-	-

### Entitlement for completed years and months of service

### PLUS

### Entitlement for completed weeks and days of service

Completed Weeks	Completed Days						
	0	1	2	3	4	5	6
0	-	0.0024	0.0048	0.0072	0.0095	0.0119	0.0143
1	0.0167	0.0191	0.0215	0.0238	0.0262	0.0286	0.0310
2	0.0333	0.0357	0.0381	0.0404	0.0428	0.0452	0.0476
3	0.0500	0.0524	0.0548	0.0571	0.0595	0.0619	0.0642
4	0.0667	0.0691	0.0715	0.0738	-	-	-

## Examples

### Entitlements accruing before 3 June 2001

1. An employee who achieved 15 but less than 20 years continuous service before 3 June 2001 is entitled to 13 weeks long service leave only (before 3 June 2001 employees were entitled to 13 weeks leave after 15 years service but did not accrue any additional entitlement until completion of a further 5 years service).
2. An employee who achieved 20 years or more continuous service before 3 June 2001 is entitled to 13 weeks long service leave plus additional leave for any period of service in excess of 15 years calculated in accordance with Table 2 (i.e. if the total service was 21 years 3 months the entitlement would be 13 weeks + 5.4167 weeks [entitlement for 6 years 3 months] = 18.4167 weeks long service leave).
3. An employee whose employment was terminated after achieving 10 but less than 15 years continuous service before 3 June 2001 is entitled to pro rata long service leave payment on termination calculated in accordance with Table 2 (before 3 June 2001 these were the qualifying periods for payment of pro rata long service leave on termination of employment). Also, prior to 3 June 2001, this entitlement did not apply if an employee was dismissed for serious misconduct.

### Entitlements accruing on or after 3 June 2001

4. An employee who commences employment on or after 3 June 2001 and achieves 10 but less than 15 years continuous service is entitled to 8.6667 weeks long service leave only (from 3 June 2001 employees are entitled to 8.6667 weeks leave after 10 years service but do not accrue any additional entitlement until completion of a further 5 years service).
5. An employee who commences employment on or after 3 June 2001 and achieves 15 years or more continuous service is entitled to 13 weeks long service leave plus additional leave for any period of service in excess of 15 years calculated in accordance with Table 2 (i.e. if the total service was 17 years 3 months the entitlement would be 13 weeks + 1.95 weeks [entitlement for 2 years 3 months] = 14.95 weeks long service leave). Remember, only

two-thirds of an employee's service before 3 June 2001 counts in working out when leave becomes due.

6. An employee whose employment is terminated after achieving 7 years continuous service on or after 3 June 2001 is entitled to pro rata long service leave payment on termination calculated in accordance with Table 2. This entitlement is subject to several conditions if the total service is less than 10 years - see page 1 of this fact sheet.

## Where can I get more information?

### Contact

- Office of Fair and Safe Work Queensland  
4<sup>th</sup> Floor, Centro Lutwyche  
543 Lutwyche Road, Lutwyche Q. 4030  
(or) PO Box 820, Lutwyche Q. 4030
- Ph: (07) 3872 0572
- Fax: (07) 3872 0519
- Telephone Interpreter Service: Ph: 131 450

\* Local call cost (mobiles & payphones may be extra)

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